IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2025
PRONOUNCED ON : 25.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.583 to 585 of 2016

The State represented by
The Inspector of Police,
Vigilance & Anti-Corruption,
Cuddalore
(Crime No.8/2011) . ..Petitioner in all the Revisions

Vs.

M.R.K.Panneerselvam ...Respondent in Crl.R.C.No.583/16

P.Kathiravan ...Respondent in Crl.R.C.No.584/16

P.Senthamizhselvi ...Respondent in Crl.R.C.No.585/16

Prayer in all the Revisions: Criminal Revision Cases filed under Section 397 read with Section 401 of Cr.P.C. to set aside the common order passed by the learned Special Judge/Chief Judicial Magistrate, Cuddalore, in Crl.M.P.Nos.146, 147 and 148 of 2013 in Spl.S.C.No.03 of 2012, dated 03.02.2016.

For Petitioner : Mr.J.Ravindran, AAG, Assisted by
Mr.S.Vinoth Kumar,
Govt. Advocate (Crl.Side)
– in all the RCs

For Respondents : Mr.R.Singaravelan, Senior Advocate
for Mr.C.Prakasam
in Crl.R.C.Nos.583 to 585/2016

******

COMMON ORDER

All these criminal revisions have been filed by the State against the order of the learned Special Judge / Chief Judicial Magistrate, Cuddalore, whereby, all the respondents were discharged from the case against them in Spl.C.Nos.03 of 2012. Since all the criminal revisions arise out of the common order passed by the learned Special Judge, they are disposed of by this common order.

2 Based on the information received by the authorities, a case was registered in Cr.No.08 of 2011 against Mr.M.R.K.Panneerselvam, for the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988, (in short 'the PC Act'). After completing investigation, charge sheet was laid against Mr.M.R.K.Panneerselvam, his

wife and his son arraying them as A1 to A3 and the same was taken on file in Spl.C.No.3 of 2012 alleging that Mr.M.R.K.Panneerselvam, who is A1, while serving as the Member of Legislative Assembly during the period between 15.04.2006 and 21.03.2011, had acquired and had been in possession of pecuniary resources and properties in his name and in the name of his family members far beyond his known source of income and A2 and A3 who are wife and son of A1, abetted the first accused to commit the said offence.

3 Pending the above case, the respondents herein have filed separate petitions in Crl.M.P.Nos.146 to 148 of 2013 under Section 239 Cr.P.C. seeking discharge. The learned Special Judge, Cuddalore, after hearing the respective counsel, by a common order dated 03.02.2016 allowed all the petitions and discharged the respondents/A1 to A3.

4 Aggrieved over the order of the learned Special Judge, discharging all the accused, the State has preferred these criminal revisions before this Court.

5 Learned Additional Advocate General assisted by the learned Government Advocate (Crl.Side) would submit that Mr.M.R.K.Panneerselvam-A1, was a Minister for Backward Classes Welfare, Government of Tamilnadu, during the period from 13.05.1996 to 14.05.2001 and subsequently he was also holding a post of Member of Legislative Assembly during the period from 2006 to 2011. During the period between 15.04.2006 to 21.03.2011 he had been in possession of pecuniary resource and properties in his name and in the name of his family members far beyond his known source of income. During the relevant point of time, A1 was a public servant within the meaning of Section 2(c) of the PC Act. The available materials viz. the statements recorded from the witnesses and documents collected during investigation would go to show that there are legal and consistent evidence to prove that the properties and pecuniary resources held by the accused had been acquired by illegitimate source.

5.1 The trial Court wrongly calculated the income of A1 on the higher side from the agricultural land and other business. The first accused, on behalf of other accused, while offering his explanation to the final

opportunity notice, did not produce any tangible satisfactory material to indicate that A2 and A3 were having sufficient independent income to acquire the massive amount of assets standing in their names. Further it is for the accused to establish that the purchase of assets is lawful and from and out of known sources, but in the present case there is no evidence to show that A2 had acquired the property standing in her name from the source of her parent either before or after marriage and during the entire period of her acquisition of property A1 alone was the earning member of the family.

5.2 The learned trial Judge erroneously made a finding that the income tax returns filed by the accused are legal documents and the income of all the accused had been assessed by filing separate income tax return and per which, there is no disproportionate assets as alleged by the prosecution. Further, the learned trial Judge erroneously arrived at a conclusion that the clubbing of properties can be possible only in the way as shown in Sections 60 and 64 of the Income Tax Act. But, the provisions of Income Tax Act are only for computing the return of assessee and concern

of income tax authorities is only tax the income of a person without any evasion and it is not their duty to analyse whether the income is from lawful or unlawful source. Only the provisions of PC Act will go into the question of whether the income of public servant is lawful or unlawful. Therefore the finding of the learned trial Judge is incorrect.

5.3 The trial Court erroneously made a finding that assets and income of Deivasigamani, who is the paternal uncle of A1 had been added to the assets of A1, but he has not been added as an accused. It is to be noted that since A1's income, expenditure and acquisition of properties are interwoven with the properties of Deivasigamani and prosecution has taken them into consideration. Further since the said Deivasigamani did not possess any assets disproportionate to the known source of his income, he has not been added as an accused. Therefore discharge of the accused on the ground of non inclusion of the said person as accused, is unsustainable.

5.4 The Special Court erroneously concluded that prosecution did not seek clarification from A1 to A3, but the fact is that the investigating

officer issued final opportunity notice to all the three accused and A1 alone responded by giving clarification for himself and on behalf of other accused, which also duly considered by the investigating officer.

5.5 The trial Court making an analysis of evidence and the question of reliability, entered into a calculation and charted the table of calculation and arrived at a finding that there is no disproportionate assets as alleged by the prosecution, which is not permissible under law and is not sustainable. In this regard prosecution placed reliance on the following decisions of the Hon'ble Supreme Court:

1. *1999 SCC (Crl) 373 Anti-Corruption Bureau vs. Surya Prakash*
2. *AIR 1980 SC 52 Superintendent & Remembrancer, Legal Affairs vs. Anil Kumar Bhunja*
3. *1999 SAR 804 Nallammal & Ors vs. State of Tamil Nadu*
4. *(2010) 9 SCC 368 Sajjan Kumar vs. CBI*

5.6 Quoting the above judgments, learned Additional Advocate General contended that at the time of framing of charges, the probative value of the material brought on record by the prosecution cannot be gone into and before framing of charges, the Court must apply its judicial mind

on the material placed by the prosecution and must be satisfied that the commission of offence by the accused was possible. Therefore it is erroneous to predicate that the prosecution should also disprove the existence of the possible sources of income of the public servant and mere grave suspicion would suffice to frame a charge, but in this case more than *prima facie* materials were produced before the Special Court and the Special Court without considering the same discharged all the accused, which warrants interference of this Court.

5.7 The learned Special Judge, has on an erroneous understanding of law, conducted a mini trial at the time of dealing with the petition under Section 239 Cr.P.C. seeking discharge and appreciated the evidence on record and discharged the accused without considering the parameter laid down by the Hon'ble Supreme Court.

5.8 Furthermore there is absolutely no explanation from the accused regarding the properties covered under documents 32 to 42 and 50 that they belong to the Trust and it was portrayed by them for the first time

while arguments were being advanced in the discharge petitions. The trial Court without considering the above fact concluded that prosecution in order to exaggerate the percentage of the disproportionate assets added the properties standing in the name of the Trust, which is unsustainable. In this regard support of his contention, the learned Additional Advocate General has referred the decision of the Hon'ble Supreme Court in the case of State vs. Bangarappa reported in (2001) 1 SCC 369, wherein it was held that if the accused fails to come forward with proper explanation, the prosecution need not wait and it can proceed further and the accused can complete his explanation during trial.

5.9 Further the learned Special Judge erred in noting that A3 acted as Benami for A1, whereas the allegation against A3 is that he has abetted A1 to acquire the disproportionate assets. The learned Special Judge also erred in coming to the conclusion that the Inspector of Police is incompetent to investigate the matter, but the Inspector of Police was authorised by the Government to conduct investigation in terms of Section 17 of the PC Act. The learned Magistrate failed to consider the materials produced by the

Investigating Officer and also the law laid down by the Hon'ble Supreme Court and traversed beyond the scope and object of Section 239 Cr.P.C. by erroneously passing the order of discharge, which warrants interference.

6 Learned Senior Counsel for the respondents would submit that A1 was former Minister of Backward Classes Welfare during the period from 15.04.2006 to 20.03.2011 and he hails from very affluent family from Muttam Village in Kattumannar Koil Taluk, Cuddalore District. His father M.R.Krishnamurthi owned agricultural lands of about 65 Acres and was harvesting 3 crops and thereby earned huge income through agriculture. A1 is a law Graduate and he is the only son to his father. During the check period he has not acquired any property and the case was registered against him and his wife only due to political motive.

6.1 The respondent along with other accused, belongs to Hindu Undivided Family and they are doing textile and Brick business and also Agriculture in their own lands and from mortgaged lands. They are cultivating a total extent of 175 acres of land. A2, who is the wife of A1, is

a native of Edmanal Village, near Sirkali and she also hails from very rich agricultural family and also Bus owner and their marriage took place in the year 1985. At the time of their marriage and even after the marriage A2 was in possession of huge monies and sufficient resources. She was also earning money independently by running Transport Company. Whatever the properties standing in the name of A2 and A3 and also monies are the individual assets, which were derived from individual sources of income not from the source of A1. The Investigating Officer failed to consider the backgrounds of the accused and also their source of income and laid the charge sheet with an ulterior motive.

6.2 The inclusion of assets standing in the name of A2 and A3 with the assets of A1 is illegal. The assets of A2 and A3 do not belong to A1 and they have independent source of income. The methodology adopted by the prosecution to establish the possession of disproportionate assets by the accused with reference to known source of income is absolutely erroneous. The clubbing of the properties of other accused with A1 is absolutely not sustainable. A1 cannot be asked to explain the source of income of others

for the properties standing in their names, over which, A1 has no claim or control. A1 has nothing to do with the properties standing in the name of his family members, who are having independent source of income. The Investigating Officer failed to consider the same and wrongly clubbed the properties standing in the name of A2 and A3 with the assets of A1. In the absence of any evidence showing that the properties standing in the name of A2 and A3 have been purchased out of the income of A1, clubbing of assets held by others with A1 is absolutely erroneous. A2 has acquired properties from and out of her own resources and A3 also has a separate source of income to acquire properties. Considering the backgrounds of the accused and their source of income, assets held by them are not disproportionate as alleged by the prosecution. The prosecution failed to consider all these aspects and in order to wreak vengeance of the political party, a false case was foisted and unfortunately prosecution also carried out the assignment given by the then Ruling Party.

6.3 Further, the learned Senior Counsel for the respondents/accused contended that in this case, the Inspector of Police prepared the complaint and registered the case on 03.10.2011 and to substantiate the allegations in the complaint, he himself took up the investigation and filed the final report on 18.06.2012, which is legally incorrect. It is well settled legal position that the officer, who registered the case should not investigate the case and he should not have conducted the investigation without prior sanction from the officer not below the rank of Superintendent of Police as required under Section 17 of the PC Act. There is no iota of evidence on records produced by the prosecution to show that the money flew from A1 to A2 and his son A3 for the acquisition of assets in their names and in the absence of such evidence the assets standing in the name of A2 and A3 cannot be clubbed with the assets of A1, which would amount to miscarriage of justice. Therefore the learned Magistrate considering the facts and evaluating the materials, rightly discharged the respondents/accused, which does not call for any interference of this Court. To support the contentions, the learned Senior Counsel placed reliance on

the *following decisions* decisions of the Hon'ble Apex Court and this court*:*

1. *Century Spinning and Manufacturing C. Ltd., vs. The State of Maharashtra (AIR 1972 SC 545)*
2. *Kalaiselvi vs. The State (2004 (2) CTC 180)*
3. *Yogesh Alias Sachin Jagdish Joshi vs. State of Maharashtra ((2008) 16 SCC 605)*
4. *Chitresh Kumar Chopra vs. State (Government of NCT of Delhi) ((2009) 16 SCC 605)*
5. *P.Vijayan vs. State of Kerala and Another ((2010) 2 SCC 398)*
6. *K.Thavasi vs. State (2014 (3) MWN (Cr.)70*
7. *Ghulam Hassan Beigh vs. Mohammad Maqbool Margrey and Ors (2022) 12 SCC 657*
8. *Vishnu Kumar Shukla and Another vs. State of Uttar Pradesh and Another (AIR Online 2023 SC 946)*
9. *Ram Prakash Chadha vs. State of Uttar Pradesh (AIR Online 2024 SC 480)*

6.4 It is unfortunate to note that the prosecution has miserably failed to even find out the real nature of the properties whether Hindu Undivided Family or Trust by collecting necessary documents at the time of investigation. Because of the gross failure on the part of the prosecution and the total non application of mind the burden may fall on the person accused

of the offence related to disproportionate assets and he may be compelled to be a witness against himself to prove that Hindu Undivided Family properties or assets are added along with his individual properties by producing necessary documents, which is against the fundamental right guaranteed to them under Article 20(3) of the Constitution of India. In this regard the learned Senior Counsel placed reliance on the following decisions of the Hon'ble Supreme Court:

1. M.P.Sharma vs. Staish Chandra (1954) 1 SCC 385
2. State of Bombay vs. Kathi Kalu Oghad 1961 SCC Online SC 74
3. State of Gujarat vs. Shyamlal Mohanlal Choksi and another 1964 SCC Online SC 41
4. State of Uttar Pradesh vs. Boota Singh and Ors (1979) 1 SCC 31

6.5 Further he would submit that the accused have properly filed income tax returns and duly accounted for the assets and liabilities. Even though the Investigating Officer failed to consider the same, the learned Magistrate rightly appreciated the materials and also found that there is no *prima facie* case against the accused and rightly discharged them. Therefore

there is no merit in the revision petitions and the same are liable to be dismissed.

7 Heard the learned Additional Advocate General assisted by the learned Government Advocate (Crl.Side) appearing for the petitioner/State and the learned Senior Counsel for the respondents/accused and perused the materials available on record.

8 Admittedly in this case, during the relevant point of time, A1 was a public servant and A2 is the wife and A3 is the son of A1. Based on the reliable information, the Investigating Officer collected materials and formed an opinion that there were suspected disproportionate assets held by the accused. Hence final opportunity notice was issued on 19.04.2012 to A1 to A3 calling for explanation and A1 alone responded to the notice by giving reply for himself and on behalf of A2 and A3. The Investigating Officer, took note of the explanation and based on the materials collected during investigation, found A1 was not able to satisfactorily account for the assets held in his name and in the name of his family members and came to

the conclusion that the assets standing in the name of A1 and his family members were disproportionate to his known source of income. However the trial Court has erroneously made an observation that the prosecution has not given sufficient opportunity to the accused to submit their explanation, which is contrary to the record and the observation of the trial Court is factually incorrect and legally unsustainable.

9 Further, if at all, the property belongs to a Hindu Undivided Family and A1 and A2 belong to wealthy family and A1 to A3 are yielding income through through their independent business, it should have been disclosed by A1 while he was provided considerable time by the Investigating Officer and A1 should have satisfactorily accounted the assets and the pecuniary resources by offering his explanation, but he failed to utilise the opportunity and therefore it is clear that the defence taken by the accused is only an afterthought and only for the purpose of this case.

10 It is settled proposition of law that at the time of framing charges, the Court has to see the final report filed by the prosecution and the

materials viz. statement of witnesses and also documents collected by the prosecution during investigation and if the same *prima facie* reveals that there is sufficient material to proceed with the case further and the Court has to frame charges against the accused. Further at the time of framing charges, the Court has to look into the materials produced by the prosecution and not the defence taken by the accused or the documents relied upon by the accused. Further the Court cannot go into the probative value of the materials produced by the prosecution and validity and veracity of the same cannot be examined at the stage of framing charges, which can only be done during trial.

11 At this juncture, it would be useful to refer to the judgement of the Hon'ble Supreme Court in the case of S*uperintendent and Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunja and Ors* reported in *(1979) 4 SCC 274,* wherein the Hon'ble Supreme Court has held as follows:

> *"**18.**It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet*

commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018] the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

12 The Hon'ble Supreme Court, in the case of *State of Karnataka vs. M.R.Hiremath* reported in *(2019) 7 SCC 515*, held as follows:

25. *The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have*

found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

"29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the

accused has committed the offence. The law does not permit a mini trial at this stage."

13 Further the Hon'ble Apex Court in the case of ***State (NCT of Delhi) Vs. Shiv Charan Bansal And Others*** reported in (2020) 2 SCC 290 held as follows :

> ***" Findings and analysis***
>
> *38. At the stage of framing charges under Section 227 and Section 228 Cr.P.C, the Court is required to consider whether there was sufficient material on record to frame charges against Shiv Charan Bansal, Shailendra Singh, Lalit Mann and Rajbir Singh. The prosecution alleged that the offences under Section 120-B, Section 302 read with Sections 120-B/34, Section 201 IPC and Section 25 of the Arms Act ought to have been framed.*
>
> ***I. Scope of Section 227 and 228 of the Cr.P.C.***
>
> *39. The Court while considering the question of framing charges under Section 227 Cr.P.C has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the facts of each case. If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial. The probative value of the evidence brought on record cannot be gone into at the stage of framing charges. The Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the ingredients constituting the alleged offence. At this stage, there cannot be a*

roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted. Reliance is placed on the Judgment of this Court in State of Bihar v. Ramesh Singh1 where it has been held that at the stage of framing charges under Sections 227 or 228 Cr.P.C., if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused had committed the offence, then the Court should proceed with the trial.

40. In a recent Judgment delivered in Dipakbhai Jagdishchandra Patel v. State of Gujarat and Another decided on 24.04.2019, this Court has laid down the law relating to framing of charges and discharge, and held that all that is required is that the court must be satisfied with the material available, that a case is made out for the accused to stand trial. A strong suspicion is sufficient for framing charges, which must be founded on some material. The material must be such which can be translated into evidence at the stage of trial. The veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged at this stage, nor is any weight to be attached to the probable defence of the accused at the stage of framing charges. The court is not to consider whether there is sufficient ground for conviction of the accused, or whether the trial is sure to end in the conviction."

14 Therefore at the stage of framing of charges, the truth, veracity and effect of the evidence produced by the prosecution need not be meticulously judged. The learned Special Judge ought to have given an opportunity to the prosecution to let in evidence during trial to prove its version and substantiate the materials collected during the investigation.

15 Further the Hon'ble Supreme Court, in the case of *State of Madhya Pradesh vs. Mohanlal Soni* reported in *(2000) 6 SCC 338,* reiterating the above, held that at the stage of framing charges, the Court has to consider whether *prima facie* there is sufficient material for proceeding against the accused and the court is not required to appreciate evidence to conclude whether the materials produced by the prosecution are sufficient or not for convicting the accused. In the present case, it is seen that the learned Special Judge, discharged the accused by elaborately discussing the income of the accused and found that there is nothing disproportionate to the known source of the accused as alleged by the prosecution, which is not permissible under law. If the court is satisfied that *prima facie* materials are available for proceeding further then charge has to be framed against the accused.

16 Yet another contention of the learned Senior Counsel is that the prosecution's methodology in establishing disproportionate assets is flawed. The clubbing of properties belonging to other accused viz. A2 and

A3, with A1's assets is unsustainable. A1 cannot be held responsible for properties in the names of individuals over whom he has no claim or control, especially when these properties were acquired from their independent income. The Investigating Officer wrongly linked these assets to A1 without any evidence to the extent that they were purchased with his income. The Trial Court held that the prosecution, only to boost the expenses and to add the value of disproportionate income, clubbed the assets of A2 and A3 along with assets of A1. In this context, it is pertinent to refer to the meaning of the expression "known sources of income," as explained by the Hon'ble Apex Court in the case of *C.S.D. Swami v. State* [AIR 1960 SC 7], wherein it has been observed as follows:

> *" Now, the expression 'known sources of income' must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that 'known sources of income' means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters 'specially within the knowledge' of the accused, within the meaning of Section 106 of the Evidence Act."*

17 Further, the Hon'ble Supreme Court, in a recent judgment in the case of State of *Tamil Nadu v. R.Soundirarasu [2023 (6) SCC 768],* reiterated the aforesaid principle and held as follows:

> *"While the expression 'known sources of income' refers to the sources known to the prosecution, the expression 'for which the public servant cannot satisfactorily account' refers to the onus or burden on the accused to satisfactorily explain and account for the assets found to be possessed by the public servant. This burden lies on the accused, as the said facts are within his special knowledge. Section 106 of the Evidence Act applies. The Explanation to Section 13(1)(e) is a procedural provision which seeks to define the expression 'known sources of income' as sources known to the prosecution and not to the accused."*

18 In the present case, admittedly, the first accused was issued a notice dated 19.04.2012, affording him an opportunity to offer his explanation. In response, the first accused offered his explanation for himself and on behalf of A2 and A3. Whether the properties in question were acquired from the income of the first accused or are the independent properties of the respondents is also an issue that can be determined only

upon full appreciation of evidence during the trial and not at the stage of deciding a petition seeking discharge.

19 One of the main reasons of the trial court to discharge the accused is that the accused had filed separate income tax returns during the check period, which the trial judge took as proof of their financial independence. However, this reasoning is flawed. Mere filing of income tax returns does not prove that the assets were lawfully acquired especially when benami (proxy) transactions are suspected. It is pertinent to note that the Income Tax Department reviews returns for tax compliance by the individual, but this case was initiated by the Vigilance and Anti-Corruption Department, not by the tax authorities. The allegations involve corruption and possession of assets beyond known income, which fall under the Vigilance Department's jurisdiction. If at all A1 to A3 reported their finances to the Income Tax department, that does not prevent the Vigilance Department from conducting its own investigation against corruption. The two departments have different roles: the Income Tax department focuses on tax matters, while Vigilance and Anti Corruption investigates corruption. Just

because the tax department accepted a returns, does not mean the assets are automatically legal, when a case is for the offence under the PC Act. If the Vigilance Department finds that the assets are disproportionate to the known source of income, it can proceed with the legal action regardless of what the tax department has done. At this juncture, it would be useful to refer the decision of the Hon'ble Supreme Court in the case of *State of Tamil Nadu vs. N.Suresh Rajan and Ors* reported in *(2014) 11 SCC 709*, wherein it is held as follows:

> *"The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law."*

20 Further the Hon'ble Supreme Court in its judgment in the case of *State of Karnataka Vs. J.Jayalalitha* reported in *(2017) 6 SCC 263* has held as follows:

> ***"190.*** *The decision is to convey that though the IT returns and the orders passed in the IT proceedings in the instant case recorded*

the income of the accused concerned as disclosed in their returns, in view of the charge levelled against them, such returns and the orders in the IT proceedings would not by themselves establish that such income had been from lawful source as contemplated in the Explanation to Section 13(1)(e) of the PC Act, 1988 and that independent evidence would be required to account for the same.

191. *Though considerable exchanges had been made in course of the arguments, centring around Section 43 of the Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to state that even assuming that the income tax returns, the proceedings in connection therewith and the decisions rendered therein are relevant and admissible in evidence as well, nothing as such, turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and further it (prosecution) as well had called in evidence the income tax returns/orders and thus, it cannot object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such*

returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. Noticeably, none of the respondents has been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge-sheet had been submitted. Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1)(e) of the Act.

192. *A Constitution Bench of this Court in Iqbal Singh Marwah v. Meenakshi Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] in this context had ruled that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding on the other as both the cases have to be decided on the basis of the evidence adduced therein.*

.....

196. *This Court ruled that the fact that the accused, other than the two Ministers, had been assessed to income tax and had paid*

income tax could not have been relied upon to discharge the accused persons in view of the allegation made by the prosecution that there was no separate income to amass such huge property. It was underlined that the property in the name of the income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee and that if this proposition was accepted, it would lead to disastrous consequences. This Court reflected that in such an eventuality it will give opportunities to the corrupt public servant to amass property in the name of known person, pay income tax on their behalf and then be out from the mischief of law.

21 In view of the above decisions made by the Hon'ble Supreme Court, in the present case, merely the accused have filed income tax returns, they cannot be allowed to escape from the clutches of law unless the same is proved with sufficient materials in the manner known to law.

22 The learned Senior Counsel appearing for the respondents submitted that the present case has been foisted with political malice, and that the complaint, being motivated by rivalry, ought not to have formed the basis for initiating prosecution. It was contended that the charge sheet has

been filed without due consideration of the relevant materials, and that the allegation of disproportionate assets has not been satisfactorily substantiated. However, the mere allegation of malafides or political animosity cannot, by itself, be a ground for quashing the proceedings or discharging the accused. Once the Investigating Officer registers a case, conducts investigation, and files a charge sheet finding prima facie material, it is for the Court to assess whether there is sufficient ground to proceed. The Court is then to frame charges and allow the prosecution to establish its case by leading evidence. In this context, it would be useful to refer to the decision of the Hon'ble Supreme Court in ***State of M.P. v. Awadh Kishore Gupta & Ors.,*** *[(2004) 1 SCC 691],* wherein it was held that the veracity of the allegations and the motive behind the complaint are matters to be tested during trial and cannot be the sole basis for pre-trial intervention.

> *"**8.** Exercise of power under Section 482 of the Code in a case of this nature is an exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to*

give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice

for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. *In R.P. Kapur v. State of Punjab [AIR 1960 SC 866 : 1960 Cri LJ 1239] this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:*

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. *In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its*

power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable

offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. *As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High*

Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. (See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by

the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decide the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.

23 Therefore while deciding a petition under Section 239 Cr.P.C. the Court cannot function as a Court of appeal or revision. Further, the Court, while dealing with the petition seeking discharge, cannot appreciate the evidence, but can evaluate the material and documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceeding against the accused. The Section should not be an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death and the Court has to see whether there exist *prima facie* materials to proceed against the accused. The citations referred to by the learned Senior Counsel for the respondents are not applicable to the facts of the present case on hand especially when the offence is under the PC Act and the case is at the stage of framing of charges.

24 As far as the contention regarding the validity of sanction is concerned, a mere defect in the sanction would not affect the case of the prosecution and in this regard it is useful to refer the decision of the *Hon'ble Supreme Court* reported in *(2009) 15 SCC 537* in the case of *V.Padmanabham vs. Government of Andhra Pradesh and Ors* and the

relevant portion is extracted hereunder:

"8. So far as the defect in sanction aspect is concerned, the circular on which the High Court has placed reliance needs to be noted. The Circular in question is dated 9-2-1988 the relevant portion reads as follows:

The Government also decided that before giving approval of prosecutions, the Principal Secretary, Law and Legal Department will obtain the advice of department concerned."

A bare perusal of the paragraph shows that before giving approval for prosecution, advice of the department concerned was necessary. The question arises whether the absence of advice renders the sanction inoperative. Undisputedly the sanction has been given by the Department of Law and Legislative Affairs. The State Government had granted approval of the prosecution. As noted above, the sanction was granted in the name of the Governor of the State by the Additional Secretary, Department of Law and Legislative Affairs. The advice at the most is an interdepartmental matter.

9. *Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the*

ground of absence of/or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the court a failure of justice has in fact been occasioned thereby.

10. *In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established is yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was led. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [(2004) 7 SCC 763 : 2004 SCC (Cri) 2140] and in Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] need to be noted. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct.*

11. *Coming to the appeal filed by the accused one of the questions is whether the investigating officer was authorised to conduct the investigation. The investigation was carried on by the duly authorised officer, namely, the Deputy Superintendent of Police under Section 17(c) of the Act. The broader issues raised need not be looked into. The function of investigation*

was merely to collect evidence and any irregularity and illegality in the course of collection of evidence can hardly be considered by itself to affect the legality of trial by a competent court of the offence so investigated."

25 The Hon'ble Supreme Court, in the decision reported in *(2004) 7 SCC 763* in the case of State by *Police Inspector vs. T.Venkatesh Murthy,* further held as follows:

> ***7.*** *A combined reading of sub-sections (3) and (4) makes the position clear that notwithstanding anything contained in the Code no finding, sentence and order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court a failure of justice has in fact been occasioned thereby.*
>
> ***8.*** *Clause (b) of sub-section (3) is also relevant. It shows that no court shall stay the proceedings under the Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.*

9. *Sub-section (4) postulates that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in the sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.*

10. *Explanation appended to the section is also of significance. It provides, that for the purpose of Section 19, error includes competency of the authority to grant sanction.*

26 Yet another decision reported in *(2023) 1 SCC 329* in the case of *Vijay Rajmohan vs CBI (Anti Corruption Branch)* held as follows:

22. *Statutory provisions requiring sanction before prosecution either under Section 197CrPC or under Section 97 of the PC Act also intend to serve the very same purpose of protecting a public servant. These protections are not available to other citizens because of the inherent vulnerabilities of a public servant and the need to protect them. However, the said protection is neither a shield against dereliction of duty nor an absolute immunity against corrupt practices. The limited immunity or bar is only subject to a sanction by the appointing authority.*

27 The Hon'ble Apex Court, in the recent judgment in the case of *State vs. Easwaran (2025 INSC 397)* held that the High Court committed an error in quashing the prosecution on the grounds that the sanction to prosecute was illegal and invalid. The Hon'ble Apex Court has reiterated that the validity of a sanction is an issue that must be examined during the course of trial.

28 The learned Senior Counsel for the respondents/accused contended that gross failure on the part of the prosecution and the total non application of mind, the burden will fall on the person accused of the offenc under PC Act and he may be compelled to be a witness against themselves to prove that Hindu Undivided Properties and the assets of the individual are added by producing necessary documents, which is against the fundamental right guaranteed under Article 20(3) of the Constitution of India and he also placed reliance on the decisions of the Hon'ble Apex Court. In the present case, there was no compulsion for the accused to witness against themselves. The accused have filed petitions under Section 239 Cr.P.C and to strengthen their defence they produced some revenue

documents. At the risk of repetition, if the accused are all having their independent source of income, it should have been disclosed, while notice dated 19.04.2012 was served on A1 to A3. Further this Court already elaborately discussed the known source of income and it is settled proposition of law that the Court, while dealing with an application under Section 239 Cr.P.C. has to accept the materials brought on record by the prosecution. Therefore the contention with regard to Article 20(3) of the Constitution of India is not sustainable, especially, for this case and the decisions relied on by the learned Senior Counsel are not applicable to the facts of the present case on hand.

29 Furthermore the case is now only at the stage of framing charges and the respondents/accused are free to raise all their defences before the trial Court. A challenge on a mere technical ground at this stage is untenable. Hence, the contention regarding defect in sanction is rejected, and the judgments relied upon by the learned Senior Counsel are not applicable to the present case.

30 As far as the allegation against A2 and A3 that they abetted A1 to amass wealth is concerned, the learned Senior Counsel for the respondents/accused contended that there is no abetment on the part of A2 and A3 and they all have separate independent source of income and that the learned Special Judge has also made an observation that the prosecution has not proved that A2 and A3 abetted A1 to acquire assets which are disproportionate to his known source of income. However, the allegation of the prosecution against A2 and A3 is that they abetted A1 for acquiring the properties which are disproportionate to his known sources. Therefore, A2 and A3 have to be tried along with A1. In this regard it is useful to refer the decisions of the Hon'ble Supreme Court in the case of ***"P.Nallammal & Others-Vs-State of Tamil Nadu" (1999 SAR 804),*** wherein it is held as follows:

> *"Legislative intent is manifest that abettors of all the difference offences u/s. 13(1)(e) of the P.C. Act-1988 should also be dealt along with the public servant in the same trial held by the Special Judge".*

31 In view of the above principles, the abettors of all the offence under the PC Act, should be dealt along with the public servant in the same trial by the Special Judge. Therefore the reason cited by the learned Special Judge to discharge the accused is not sustainable.

32 This Court has carefully gone through the allegations in the charge sheet, statement of witnesses and the documents, which reveal that there is *prima facie* materials to proceed further.

33 Furthermore, prosecution has to be given an opportunity to prove its case and substantiate the materials collected during investigation. A reading of the entire materials and also the order passed by the learned Chief Judicial Magistrate, reveal that the learned trial Judge traversed beyond the scope of Section 239 Cr.P.C. and this Court finds that there are *prima facie* materials to proceed with the case further against the accused.

34 The grounds taken by the respondent/accused are nothing but defences, which are all matter for trial. In the present case, finding of the

trial Judge is perverse and there is a compelling reason to interfere with the order passed by the learned Magistrate.

35 Therefore these revisions are allowed and the common order of the learned Special Judge/Chief Judicial Magistrate, Cuddalore, in Crl.M.P.Nos.146, 147 and 148 of 2013 in Spl.S.C.No.03 of 2012, dated 03.02.2016., is hereby set aside and the Special Court is directed to frame charges against the accused and proceed further in accordance with law. Further, since the check period is between 2006 to 2011 and the case is of the year 2012, the trial Court is directed to conduct trial on a day to day basis and dispose of the matter on merits in accordance with law within a period of six months from the date of receipt of a copy of this order.

25.04.2025
(2/2)

Neutral Citation : Yes/No
cgi

To

1. The Special Judge/Chief Judicial Magistrate, Cuddalore,

3. The Public Prosecutor, High Court of Madras.

Copy to: 1) The Section Officer, Criminal Section, High Court Madras

2) The Section Officer, ER Section, High Court Madras

P.VELMURUGAN, J.,

cgi

Pre-Delivery Order in
Crl.R.C.Nos.583 to 585 of 2016

25.04.2025
(2/2)